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RESPONDING TO THE CHALLENGES OF MULTICULTURAL SOCIETIES: THE CONTRIBUTION OF INDONESIAN ISLAMIC STUDIES
"Islamic Jurisprudence in Resolving Contemporary Problems"

Does Multicultural Society Prefer Participation and Dialogue in Legal Formation?

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Introduction

Making itself legally fairly just and worldly dynamic, Muslim jurisprudence has been historically productive and contemporarily relevant. In the era of nation-state, however, the relevance of Islamic law in the formation of the national legal system has been problematized and not rarely stigmatized to the extent of being sidelined and given an customary station of being janitor. Worse still it has been considered too parochial, unfit to the universal and rational legal secularity. Despite the many episodes of thepromulgation, but not the implementation, of full-fledged Islamic law by some Muslim leaders in many cases a deferent gesture to the increasing domestic demand to that effect, the relevance and concrete contribution of Islamic jurisprudence to the life of the global citizens have been the major legal turn.

In discussing the contributions of Islamic jurisprudence to addressing contemporary problems, this papers wil not bring in concrete examples of such contributions, rather introduces some reflections on how Islamic jurisprudence has played its role in major historical moments. It is not their history proper that of relevance but it is their dynamic process and multifacedness which may have some meaning to the major topic of this Conference's session. To address these I shall highlight
Historical moments
Landmark juridical thought and major jurists
Some insights into contemporary change and challenge:

History and law have shared the need to have political entity, a polity, a habitat, for its respective presence. Yet, the resilience and character of Islamic jurisprudence hinges more on its discursive autonomy than the state patronage it enjoys. What does this have to do with any analysis of jurisprudence and contemporary world? The public and the shared, including state with all the love and hate mixture, come to the fore normally through uneased negotiations by all stakeholders. Even under the classical Islamic caliphates with all their formal legitimate authority, they had no monopoly over the overall legal matters, as I shall return shortly. The obvious reason can be gleaned from the fact that they were not proper state in the post-Enlightmentment sense, it was, to use Myrdal's terms "soft state." Not surprisingly under the new nation-state formula of centralization and integration, all things under the sun must be brought under one roof, including its legal system at the expense even of all the other smooth running "private" systems, including Islamic law.

Thesis: Dialogue and harmonization between legal partners in law making and legal practice serve fairer judgment and balanced justice.
Key words: harmonization, engagement and dialogue in lawmaking, historical reflection.

The more consistent, value-oriented legal opining unfold, the longer its validity and closer its relation to the sharī'a will be. Do we need multi-layered legal institutions? On the one hand they keep in touch with and address purely practical issues and on the other deal with the more long-term moral, legal perspective.

I have been inspired by the counsel given by Ibn al-Muqaffa‘ to the ‘Abbasi caliph, al-Manṣūr and also the resilience and relevance of Islamic jurisprudence to individual Muslims and the community throughout Islamic history, both under loose and strong political organization or ruler. It is a fact that Ibn al-Muqaffa‘’s councel to the caliph al-Manṣūr and the latter negative response led to the autonomy and growth of Islamic jurisprudence and its formidable place in Islamic intellectual tradition. At the same time, Muslim rulers have also developed, with the support of jurists, various mechanism to produce relevant laws. The wide circulation of such legal terms as *qānūn, ta‘zīr, siyāsa shar‘īya* and *ḥiyal* indicate how governance and government urgently need to have some ways out to address the pressing issues and problems, whether positively or negatively. Next, the continuing scholarly exchanges among Muslim legal specialists concerning the role of Islamic law in modern nation-state show the diversity of opinions, the secularist, the complementarist and the dialogist.

The acceptance of the national system obviously need full support of all citizens, including Muslims. Acceptance also connotes sharing and contributing the burden and the fruit of having the nation. As far as the legal system is concerned, independent Indonesia has inherited various legal traditions, including the colonial Dutch heritage, Islamic law and various customs. For one the national government has endorsed almost fully all the civil and criminal laws and their judiciary, leaving little rooms for the other two stream, at least in theory. *De facto* the dialogue continues and in the case of Islamic law has increasingly found a stronger niche in the national legal system. It is here that my presentation on the contributions of Islamic jurisprudence to solving contemporary problems will start and also end.

Hypothetically we accept the civil pluralistic culture inherently prevails in public lawmaking. What this implies, then, is that in lieu of a separationist paradigm, the law should adopt a paradigm of principled reconciliation in which legal values and religious values are in a state of continual dialogue with the potential that each may inform and shape the other. Only through this process of continual dialogue can there emerge legal principles that all “reasonable doctrines” can accept for the “rightreasons.”

The relevance of Islamic jurisprudence to the changing conditions and geographical location necessitates the closer examination of the layered concepts of wellbeing, environment, public health, governance, technological change and global communication, including political shift and individual experience. Islamic jurisprudence should be associated only with curing and mediating but also with inspiring and innovating. How can legislation and legal system contribute to that? For example, it is true that Islamic jurisprudence has ample ways to help Muslims build harmonious and positive family and children. Yet, we need also to promote the many practical, strategic and futurist legal values from commonweal or common good to prophylactic or preventive measure, to mention only the most repeated terms.

As a major world religion, Islam has been endorsed and at the same time moulded cultures and institutions which enriched Islamic presence including its legal and juridical products, principles, nomenclatures, tools and discourses. At the same time, historical stages and men of action and thought have paved the way for and often manifested the human and temporal relevance of Islamic legal idea.

The dynamics of historized Islamic principles can be seen in their patterned responses and progressive imprints on the lives of their practitioners and their environs in different times and locations of centralized polities, military regimes and civil communities. From the early experimentation of the nascent Muslim *khilafa* to the autonomous Maldivian nation, Islamic order has in their respective historical junctures emerged as major buttressing bones. When the government prevailed, some form of Islamic law was in varying shapes proclaimed, at the nadir of Muslim worldly presence, Islamic identity was best maintained at the level of communal solidarity through diverse social and religious activities, performances, arts and institutions.

From the outset Islamic jurisprudence has put the revealed truth at the forefront of legal principles and at the same time paved the way for new solution based on reasoning, general principles and practical solution under different labels. For Muslim scholars Islamic jurisprudence has come up with several legal and juristic arsenals to deal with new issues and problems.Key concepts relevant to many new questions and challenges, for example,*istihsan, maslaha, sadd al-dharī'a, custom,* and *siyasa shar`iya* are based on the eternal revealed messages.

Some Backgrounds to the Paper's Thesis

Various studies have shown the worth of Islamic law and jurisprudence in responding to challenges and changes, including those by Muslim and Western scholars such as Feener (2013) in his study of sharī'a-oriented development program in post-tsunami Aceh. "It also shows how the overall system was informed not only by aspects of late twentieth-century *da'wa* discourses of Islamic reform, but also modern trends in sociological jurisprudence and the impact of global models of disaster relief, reconstruction, and development. All of these streams of influence have contributed significantly to shaping the ways in which the architects and agents of the state *sharī'a* system have attempted to use Islamic legislation and legal institutions as tools to steer society in particular desired directions."

Muslims need restate Sharī'a rules and reconceptualize their political community. Hallaq asserts, echoing Lambton's linkage between Islamic governance and the sharī'a (1981:especially 307, 315), "during this initial process of building morally based communities, there is much that Muslims can do to contribute to the reformation of modern moralities"(Hallaq 2013:118).

A certain narrowness and rigidity in Islamic jurisprudence prevailed as *ijtihad* was relegated giving way to *taqlid* and the concept of decision by consensus (*ijmā`*) to its recognition as a principle of authority. Yet, such staticism indirectly led to stability of the law and its autonomy substantially empowered its survival during the time of political crisis and decentralization (Lambton 1981:12).

Abdullahi An-Na'im (2013:1254) has advocated for shari'a and state law to be complementary normative systems, instead of being in mutually destructive conflict, each system must operate on its own terms and within its field of competency and authority.

Mohammad H. Fadel (2012:1259, 1271) argues "...substantive Islamic law —when read properly after taking into account the differences in social and political contexts in which those rules were originally developed and applied— continues to provide doctrinal resources that are supportive of a more just and humane world," - an Islamic reflective equilibrium.The challenge facing scholars of Islamic law, of course, is separating its underlying structural principles from the detailed historical application of those principles, and then articulating those principles in a manner consistent with a universalist and humanist conception of law, in contrast to Islamic law's historical form when it was first and foremost a law for Muslims. The adherents of the various reasonable, including religious, doctrines -that will flourish in a democratic regime- will be able to endorse the constitution based on reasons that are internal to their own conceptions of the good and not because they are too weak to disagree and resist.

If Professor Kamali considers the great works of al-Mawardi on statecraft remains silent on political participation and democracy,[1] it remains true that such great thinkers and jurists as Mawardi, Juwayni and Ibn Khadun significantly contributed to the translation of Islamic principles into actual historical conditions. Their ideas were relevant to the changing conditions and challenges circumstances. Obviously as

[1] M. H. Kamali 2008: "...but none on consultative governance or the basic rights of the people. The distinguished authors [al-Māwardi and Abu Ya'lā] of these works seem to have taken the realities of the Abbasid state as their basic framework of analysis and thus tended to vindicate the existing status quo."

interpretations and proposals what they opined also suffered incompleteness and weaknesses. As such what they started also left more rooms for later generations to work out and offer new interpretations and reexaminations.

In our contemporary period, we have seen attempts by diverse Muslims to relive and transform the early institutional and ideational models as responses to what they consider failure of the modern ones to bring a better world as well as their own fellow religionists to uphold the pristine messages and not rarely the words of the Scripture.

Obviously certain concepts and institutions, including those related to Islamic jurisprudence, have not objectively catered the changing contexts of modern change. For example, we have only recently found more scholarly attention given to Muslim minorities. As far as Islamic jurisprudence is concerned they belong to the majority and thus were not specifically addressed. Should they simply endorse the many redundant ways of expressing their public religiousness? How should they promote the positive sides of being Muslim living as minorities among the seas of other fellow citizens?

This paper aims to show that the major contributions of Islamic jurisprudence to our contemporary world come as much from its practical guide and solution as from its general concepts and anticipative-inspirational ideas. The more realistic a initiative/solution, the more longlasting.

Justice is not revealed in frozen words but through work and fight in complex world and diverse settings. In the Islamic context, it is clear that powerholder is given legitimacy to rule in comparison to the obedience to God and his prophet. From the thought of Muslim jurists and scholars to its contemporary response by the leaders and public it is clear that noble ideas including justice cannot be simply uttered and left to materialize. They need to be promoted and ushered for implementation, especially when they deal with justice.

The fact that Islamic jurisprudence generally grew and prospered at the hand of private scholars and jurists indicates the moral and structural relevance of its juristic and religious formulation to society at large – Muslim social order. Not surprisingly, it has permeated social and private lifeway of Muslims. It leaves prints of Islamic characteristics on individuals and community and their ordering.

Pre-modern Muslim society the world over, like any, had its share of misery. However, for Hallaq (2013:18), the moral law consistently and unquestionably ruled the day, its paradigmatic discourses and practices persisting in the continual re-creation of a particular order. In the next breath, Hallaq rather pessimistically argues that all these moral niceties have become one-sided in the face of today's globalizing-corporatist world.

Despite the fact that Islamic jurisprudence has resisted for almost all its developments attempts at centralization and bureaucratization, it has been used and endorsed by diverse rulers from the ʿAbbāsīs to the British to refer to one of a few names in recent times.The polity, nation-state in the modern term and the *khilafah* (caliphate) in the conventional Islamic term, has contributed to the formation of some positivist genre of legal system. The British Mohammedan Law and Suharto's KHI 1991, to refer to the most familiar cases in this region categorically show the role of the state in guiding if not imposing some legal maxim to their formation and implementation. Despite their incomplete and blurred representation of Islamic law, they provide a clear path in bringing equal access to single legal and juridical code at least at the national level. How can we categorize the recent surges of legal Islamization as can be seen in the local and national levels, the *hudud* in Brunei and Kelantan and those Islamic enactments in Indonesian provinces. Were they simply extensions of the recurrent state politics of legal formation or they reflect deeper Islamic legal awakening?

Globalization has an obvious impact on (1) creating more homogenous Muslim public expression of Islam from dietary preference to dress code. Positively this global trend potentially opens challenges and opportunities for Muslim entrepreneurs and businessmen. For example, the Islamic dietary preference can lead to better quality, control and production of cosmetics, medicine, food and beverage.

(2) The increasing Muslim preoccupation with more mundane and at hand issues from dietary and bank has a very positive impact on mitigating their old involvement in bitter debate about ritual details such as the number rakʿat in Tarāwīh during the month of Ramaḍān. Sociologically this can be seen as *mutatis mutandis* effects of Muslims' increasingly worldly orientation and their endorsed religious norms.

(3) Muslims are willing to address their problems head-on, referring to more open authorities not limited to the conventional sources.

Guide for Muslims to live in and witness the world Islamically means at the macro level to adhere to their horizontal mission as *khalīfah* and at the same time live up to their vertical orientation as executors of divine mission *(ʿābidūn)*. As Muslims have shown in their lived history for the past fourteen and a half centuries, it is clear that they could not always succeed to balance their vertical and horizontal role, however, the pendulum-swing mode of their approximation can be taken as the way forward for the present and future – indeed all- generations. None has ever and never completed the task until the promised moment of divine bliss, as it appears. This is not a predetermined scheme but it is an invitation to wrest and act. If Professor Wael Hallaq (2013) has shown in a fascinating broad legal brush but through truncated Islamic historical eyes how Islamic precept (*sharīʿah*) functioned within pre-modern Islamic societies as a moral imperative, it is clearly a debacle as he comes to the modern stage. Obviously exchange and interaction may take a longer or shorter passage, and the result remains diverse. It is, after all, an ongoing search.

Juristic *Verstehen* of the divine words potentially guides the expected action of individuals and at the same time reflects the lived experience of the community. In his Muqaddima, Ibn Khaldun (d.1406) defines Islamic jurisprudence as "knowledge of the rules of Allah which concern the action of persons who own themselves bound to obey the law … . It is the body of rules derived from these laws that is called *fiqh*. For Taj al-Din al-Subki (d.1370) it is "knowledge of the practical rules of Islam (*al-dīn*)."

Islamic jurisprudence has been stigmatized in many popular forms with pejorative identification from barren black-and-white categorization to piece-and-bit orientation –atomization and fragmentation. The fact remains that its presence and relevance to Muslims show that such popular wits reflect a facet of general love-and-hate modes in society. It serves Muslims and others how to live in private and public spaces. Some scholars have raised questions as to how Islamic jurisprudence and theology found their respective different position in the Muslim community. For one, Islamic belief system or theology has enjoyed a relatively stable and monolithic expression in key issues, whereas Islamic jurisprudence shows complexity and diversity, as can be seen in the coexistence of *madhāhib al-fiqh*. Caliph al-Mansur has been credited with this state of legal affairs involving two noted figures in early Islam, Imam Malik and Ibn al-Muqaffaʿ. Despite the fact that Islam has spread and developed under the patronage of the state in different forms and names, the formation of Islamic legal system generally occurred external to the state's direct influence. Was it a blessing in disguise or rather a missing opportunity for Islamic legislation and developing positive Islamic law endorsed by the state?

Open participation for all in the development of legal system allows merit-oriented endorsement of legal standard. Islamic jurisprudence has to prove its worth in this scheme of open participation.

Lynn Welchman claims that since the second half of the 20th century, Islamic law or *sharīʿa* has occupied a more strategic position in the opposition movements and the governments of Muslim majority states.[2] All

[2] Lynn Welchman, "Women, Family and the Law: The Muslim Personal Status Law Debate in Arab States." *New CHI* 6:412.

can best be seen in the positivist approaches to legislative power concentrated on the statutory expression of rules in different areas of state law as well as demands by the oppositions to impose the *sharīʿa* as a source (or the source) of statutory legislation. I cannot see what other more significant contributions of the Islamic jurisprudence to our contemporary problems. Obviously Muslims have very important facets in life, other than the formal, the civic way. Here the role of Islamic jurisprudence as the minimalist identifier for Islamicness in the era of nation-state has been coined in the popular terms -Islamic family law.
For Daniel S. Lev (1972:257, 263), politics closely affect the developments of Islamic, and indeed any, legal institutions. Put in the context of polarized Muslim social and religious structure, the powerholder can take advantage of religious politics among Muslims playing around with the divisions cajoling one and pushing the other and *vice-versa* through legislation and legal mechanism.
Legal system and law are not confined to formal structures and rules alone, they also include how structures and rules are understood, variably used, accepted, manipulated, amended and avoided along with all the informal structures and modes of action that this kind of definition implies. Indeed, legal systems and law are symbols, and what they are symbolic of, to mention some, is authority, which by its legitimacy, its social rightness, earns loyalty and a measure of compliance.
Seen in the context of Indonesia, the functioning of Islamic law through its jurisprudence must be located with the dialogist presence amid the general national legal system. The continuing dialogues and exchanges must be seen in the context of finding the best legal practice in the country. Isn't that a major contribution of Islamic jurisprudence to our contemporary world?

Major historical trends and patterns of global relevance

1.Some legal certainty and unification are needed to allow, at the same time, open expression and innovation leading to the blessed world full of bounty and harmony (Ibn al-Muqaffaʿ's episode at once expresses the need to legal unification and also the empowerment of civil society as independent scholars continue to exercise autonomy and freedom of expression). As I shall show shortly, Ibn al-Muqaffaʿ strongly upheld the benefits of the integration of all peoples within the Islamic state guided by an established religion. And for him, partly inspired by the centralized Sassanian state, he saw the potential of Islamic law as a means to toward that social integration and political empowerement.

2.Jurisprudential dynamic becomes the major pattern of legal developments in Islamic history. The form and substance of government had occupied the mind of Muslim scholars following the death of the Prophet. The initiative and practice of governing and governance as exemplified by the *khilāfa* turned out to become a major legal reference in public affairs. It was considered relevance religiously and socially, politically and philosophically. When it degenerated failing to catch up with the unfolding events and historical change, scholars struggled to find a religious and philosophical foundation for the change.

3.The question of leadership and government continues to haunt Muslim jurists. If generally the classical jurists had endorsed the leadership personality from among the Prophet's kin, Quraysh, by the downfall of Baghdad in 1258 it had become apparent that non-Quraysh showed as equally if not more superior potential powerholders. Indeed, as we shall see, Ibn Khaldun (d.1406) was in favor of quality not descent for the criterion of leadership; for Ibn Khaldun, the Islamic universal government forms a *khilafa ʿan ṣāḥib al-sharʿ fi ḥirāsat al-dīn wa-siyāsat al-dunyā bih*.[3] "Throughout the *Muqaddima* the ethical and Islamic basis of [Ibn Khaldūn's] thought is implicit and a firm conviction of the supremacy of the divine law, which ultimately guides and determines whatever happens, is apparent. He lays down a law of limited causality, but ultimately it is God who is in charge" (Lambton 1981:176).

4.More pressing was the legitimacy of government of the occupying forces (Sicily and al-Andalus and the colonized territories) and the status of Muslims within. We may refer to the opinions expressed by several Maghribi scholars in the 16th century such as al-Wansharīsī (d.1508) who argued invariably in favor of

[3] Ibn Khaldūn, *Muqaddimat Ibn Khaldūn*, 191-5. For Ibn Khaldūn, all religious laws must have *maqāṣid* (rationale and purposes) and *ḥikam* (meanings and wisdom) of their own, on account of which they were made.

*hijrah*from those lands.[4] In the 19th century Netherland Indies, Sayyid ʻUthman of Betawi automatically comes to mind when he provided various guides for Muslims to live peacefully under the Dutch government.

5.Concomitant with the formation of the nation-state with its nationalism, some Muslim jurists also raised the question of forming national school of jurisprudence. The national environment that inspired patriotism affected the view of addressing emerging religious issues in local context, especially concerning social and economic sector of life. Hazairin came up with a discursive plan to develop an Indonesian version of Islamic jurisprudence. Younger scholars have admirably or critically refered to him for inspiration.

The Muslim world has witnessed several relational models between the state and *sharīʻa* from the classical to the more recent time.

The formulation of Islamic law as represented by the *fuqahāʼ* has been considered a variant in the duality of the legal reference: the state and the scholars. On the one hand, Islamic jurisprudence has grown autonomously from the state interference and thus its bottom-up character and relevance to the the religious and social needs of the Muslim population. On the other, the state as represented by the ruler from caliph to sultan formally enjoyed the highest legal authority in their respective politica sphere.

The Ottoman Empire, has been credited with having abundant legal records, exemplifies synergy between the ruler's law and Islamic law. The Ottoman *kanun* added to the religious law in matters relating to public order, taxation, usury, and land tenure. Yet, at the same time, the *kanun* was accepted as an integral part of the legal culture required by the shariʻah; the two complemented each other.

Under the Mamluks, the expansion of *siyāsah* jurisdiction was designed to offer legal solutions that went beyond the doctrines of the Sunni schools of law. By and large, *siyāsah* justice was perceived as a necessary complement to the shariʻah, as it plugged loopholes in the schools' doctrines (Rapoport 2012).

In the Mamluk final years the tension between the *siyāsah,* grounded in notions of equity but open to arbitrary implementation, and the formalistic and ineffective shariʻah, came to a head. It is only the Ottomans who would resolve this tension by enforcing a unified *kanun* based on the shariʻah.

The expansion of the *siyāsah* jurisdiction set out to bolster the shariʻah rather than defeat it.
This fits with a much wider pattern in Muslim societies of the late Middle Ages and the Early Modern period. Indeed, the Ottoman *kanun* added to the religious law in matters relating to public order, taxation, usury, and land tenure.

David Powers (2002)[5] challenges Lawrence Rosen's largely essentialist characterization of Islamic law in Marocco. Rosen's generalizations of local judges for relying on indigenous values and communal traditions, for Powers neglect the formal, substantive aspects of *sharīʻa* that many qadis in the past observed and applied in their judgements. Powers, like Haim Gerber (1994), considers the work of the mufti complemented that of the qadi in the Marinid judicial system. Whereas the *muftī*was an assessor of the legal doctrine, the *qāḍī* was an assessor of the fact. Indeed, individual Maghribi judges and jurists may have pursued extra-judicial agenda, however, in general they operated within the boundaries of the legal system and justified their operations with reference to it.

The fact that society and politics –the state have a strong hand in moulding religious understanding including the legal system, it is pertinent that religious principles as expressed among other things in laws, should be assigned niches as others to excel and thus contribute to the betterment of life conditioning and humanity. (Fadel 2013)

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[4]See Abou El Fadl 1994:153-54.
[5]*Law, Society and Culture in the Maghrib, 1300-1500*, CUP, 2002.

The underlying thought of many jurists confronted with difficult choices of action and opining focuses on maintaining the best options possible out of the available. For example the idea of maintaining order over anarchy (Ghazālī), avoiding power vacuum (Ibn Jamā'a), and establishing justice or pursuing the general welfare (Rāzī).

Looking back at the early models of prioritizing the *sharī'a* in the the public domain, one will first encounter the typical classical model of conditioning legitimacy of Islamic leadership with the *sharī'a* commitment, normally referred to the words of Caliph Abu Bakr. Next, new generations of scholars since the 10th century, insired in part by the Platonic idea of an ideal ruler, inserted the extra-qualities including reason, competence and courage, knowledge and/or moral standard. This can be seen very clearly in the works of al-Ghazālī (d.1111), *Naṣīḥat al-Mulūk* and al-Rāzī (d.1209), *Jāmi' al-'Ulūm.*

The downfall of Baghdad in 1258 which marked an end to the Islamic caliphate posed a challenge to the Muslim jurists concerning the legitimacy of agency, the protector of the faith and its burgeoning institutions. The fact that some political order had been established by new rulers and dynasties, including the Mamluks, the prevailing juristic view of giving some legitimacy to them was considered relatively a more preferable option than leaving the community leaderless potentially leading to anarchy, they argued. Under this new and difficult atmosphere, a scholar-*cum*-judge, Badr al-Dīn ibn Jamā'a came up with a bold idea for legitimizing the prevailing political order, sultanate, transferring to *de facto* ruler the "constitutions theories" elaborated by the earlier jurists such as al-Māwardī and al-Ghazālī. For him the seizure of power inherently connotes authority and its holder deserves imamship. However, Ibn Jamā'a, like Ibn Taymīya (d.1328), warns the powerholders to consult the scholars and maintain close contact with them. Further than al-Ghazali, Ibn Jamā'a maintains that if under certain circumstances no imam prevails and someone not properly qualified assumes "charge of the office" and enjoys authority over the people by his power and military force having no pledge or not being appointed by the previous ruler, the new pledge must be conferred to him and obedience to him is incumbent. This is especially so since he could bring order and unite Muslims.

Generating new ways and legal breakthroughs

The actual translation of Islamic legal concept and principle provides us with concrete examples of the relevance and contribution of Islamic jurisprudence to Muslim life.As a social historian, I have very little to offer new insight into Islamic jurisprudence or the *sharī'a* proper, but rather to problematize the *sharī'a* and its students in crucial historical moments. Originally I planned to list the major legal initiatives by such figures and jurists as
Ibn al-Muqaffa' (d.759),al-Māwardī (d. 1058), Ibn Khaldun (d.1406), Nūr al-Dīn al-Raniri (d.1659), al-Shawkānī(d.1839), Sayyid 'Uthmān ibn Yaḥyā Betawi (d.1913), Hazairin (d.1975), Kartosuwirjo (d.1962), Munawir Sjadzali(d. July 23, 2004)and also the more recent promulgation of The Shari'a Penal Code in Brunei Darussalam.However, within the limited time I have had and the time left before the Conference, I was able to focus mainly on the relevant legal ideas of Ibn al-Muqaffa' and Sayyid 'Uthmān ibn Yaḥyā Betawi.

Of course I have very slim defense to argue for my choice of these names. Certainly I am not in any way academically relegating Ibn Khaldūn to the level of a bureaucrat like Sjadzali; at the same spirit I am not elevating Kartosuwirjo to the scholarly expertise of al-Mawardi. My major concern here is to find some legal thought in response to historical moment and major shift, change, and also opportunity and perhaps also to stimulate further research among younger scholars to the neglected study of historical legal moments and personalities of historical milestone. Keeping in mind that the more study of long duree structures and maxims have been continuously raised and examined.
Muslims seek ways to face and live with the realities of their world. Islamic jurisprudence based on the divine guide provide them a means and path to move forward. I argue that closer observation on the major

historical episode of legal thought and institution, no less its process, potentially give some proofs of the relevance if not contributions of the Islamic *Verstehen* to life signpost for Muslim navigators.
By referring to the major historical turning points and intellectual landmarks related to Islam and especially legal matters, I am confident some relevantunderstading of the contributions and perhaps temporal relevance of Islamic jurisprudence can be achieved. The historical actors who shared their ideas responding to the evolving conditions and challenging circumstances can be seen as mirror of our own time. Here we see the best manifestation of the interplay between the revealed norms and the human dynamism at the same tune and rhythm.

Ibn al-Muqaffå 's abortive appeal to the caliph to assert his authority on the legal matters was the last major attempt to codify Islamic law until the modernizing reforms of the nineteenth century when the much weakened Ottomans launched major reform in almost all fields, including the codification of positive Islamic law, *Majallat al-Aḥkām al-ʿAdlīya* in the period 1850-1876. From here on we see more and more such laws were introduced by diverse rulers, including the colonial masters, in many different Muslim lands from the Maghrib to Nusantara.

Should we take seriously the widely circulated statement "the early Abbasid period saw the formation and formulation of Islamic law"? I am not in position to detail the debates here, but I am interested in bringing up the issue of early codification and centralization or bureaucratization of the legal system. The story of Ibn al-Muqaffa''s counsel to Caliph al-Manṣūr (d.775) for bringing together the diverse religious-legal opinions of jurists. He is known more for his literary marvel than religious or legal issues, yet he shows his confidence in the knowledge of statecraft and religion when he wrote his brief counsel to the caliph, *Kitāb al-Ṣaḥābah*. I shall not repeat the many early studies of this treatise, thus confine to pick their relevance to the theme of my paper, lesson from the marvels and the brilliance toward the progressive synergy between the national and other legal traditions, including Islamic law.

In *Kitāb al-Ṣaḥāba*,[6] Ibn al-Muqaffaʿ maintains that a government merited obedience only if it applied the provisions revealed in the Qur'an and the traditions. However, except for what was authoritatively laid down in the Qur'an and *sunna,* God had left other matters to personal judgement *(raʾy)* and entrusted the exercise of this to rulers.

He insists that it was part of the duty of the government to teach the Qurʾan, to be well versed in the *sunna,* to uphold standards of trustworthiness and integrity, and to avoid irresponsible persons. It was the duty of the caliph to admit to his company righteous *fuqahāʾ* who might serve as a model for the people, and it was the duty of the *fuqahāʾ*to be the educators of the people in every town and to prevent the spread of heresies *(bidaʿ).*

Ibn al-Muqaffaʿ deplores the wide divergences in jurisprudence and in the administration of justice existing between Iraq and other great cities and between the main schools of law and suggests that the caliph should review the different doctrines, codify and enact his own decisions in the interest of uniformity, and make his code binding on the *qāḍīs,* this code to be revised by succeeding caliphs. The caliph, and the caliph alone, Ibn al-Muqaffaʿasserts, had the right to give decisions at his discretion; he could give binding orders on matters of military and civil administration and generally in all matters in which there was no precedent, but he had to base himself un the Qur'an and the *sunna*. The rest of the Muslims had only to express their opinions when asked. Here, too, a certain contempt for the common man is evident. "We know," Ibn al-Muqaffaʿ states, "by certain knowledge that the common people (ʿ*amma*)cannot themselves find the conditions of their prosperity: these can only come from their *imam* --and this is because the majority of the common people are weak and ignorant" (Lambton 1981:53). It is true, however, that he goes on to say that the *khawāṣṣ*had an even greater need of an *imam,* through whom theirwellbeing was assured by God,[32] because of their paramount position in society.

[6] I refer to the translation used by D.S. Goitein (1966).

Ibn al-Muqaffaʿ, convinced as he was that the fundamental need was stability, considers that this could best be achieved by a rigid control by the state. His concern was that the caliph's rule should be effective and undisputed, that uniformity should be established throughout the empire and that unorthodoxy, because of its implication of political opposition, should be controlled. He was not proposing an indiscriminate resort to personal judgement by the caliph but was rather seeking to regulate the caliph's exercise of this so that the administration might function efficiently. He was in effect proposing a control by the state over both religion and law. As it turned out historical Islam did not follow his recommendation that the exercise of *rȃ y* should be confined to the domain of the ruler. The consequence of this was ainformal divorce of the state from the religious law with the result that the latter became largely theoretical while the former developed a semi-secular jurisdiction of its own.

The refusal of Caliph al-Manṣūr to impose unification of Islamic jurisprudence can be seen positively in keeping Muslims from extremism and narrow mindedness, respecting differences in choice and opining. Yet, the separation also variously led to the weakening of religious and political establishment in different areas. *Kitāb al-Ṣaḥāba* is not *Fürstenspiegel*, commonly found during the medieval Islamic period, it is a contextual plea with an eye, among other things, on legal unification. At the same tone, it is not a religious opinion, let alone Islamic jurisprudential argument, as Ibn al-Muqaffaʿ (d.760) had no claim and standing. So what can be expected from him relevant to my search for model of relevance and contribution to changing world?

Despite its title, Ibn al-Muqaffaʿ's epistle comes up with a major idea in governance. For one he pleaded for the rights of the Arab nobility. His astonishing proposal came with his detailed treatment of the necessary reforms of Muslim law. Obviously he steps to a no man-land for his less known Islamic juristic background. But there is no doubt that his advice was completely sincere, for his chief object was to secure the good conduct of the state, which could not be achieved except by a properly functioning system of law. At that early period, Muslim law was in theory and, to a degree, also in practice the law of the state, but it was in itself still very rudimentary and ill-defined. Ibn al-Muqaffaʿ vividly describes the dissensions about most basic questions with regard to both civil and criminal law which prevailed not only between several major urban Iraqi centers such as Kufa, Basra, and Ḥīra, but also between various segments within Kufa, and there was, of course, a far-reaching discord between the two main "schools" of Iraq and Hijaz, the *ahl al-raʾy* and *ahl al-ḥadīth*.

In view of such diversity in legal opinion, Ibn al-Muqaffaʿpersuaded the caliph to take the administration of law into his own hands by creating a Code—to be properly amended by his successors—based on

(a) precedents and usage *(siyar),*
(b) tradition and analogy
(c) his own decisions.

Of the traditions only those whose authenticity was attested by good authority and which were themselves reasonable should be included, while for free judgment not so much logical analogy *(qiyās)* as public welfare and equity *(mustaḥsan, maʿrūf)* were to be the true measurement.

How did Ibn al-Muqaffaʿ derive this idea of codification by the ruler? Did he get the idea from his knowledge of Sassanian legal tradition on formal lawmaking (*taqnīn qānūn*), as was earlier suggested? Or had he been inspiredby the Roman legal conceptions which had been known in the Levant for centuries before? According to Goitein (1966:162-63), there remains only one explanation for the ideas of Ibn al-Muqaffaʿ about the codification of Muslim law and belief by the Caliph: they were suggested to him by an acute observation of the Muslim state and religion themselves. Both had arrived at the crossroads where their mutual relationship had to be defined. State control over religion and law—as envisaged by Ibn al-Muqaffaʿ— was one possibility: divorce of the state from religious law with the consequence that the latter would largely become theoretical, while the state developed a secular jurisdiction of its own—was the other. Historical Islam chose the second alternative, opening the way for the development of numerous "schools" of religious law which were finally condensed into several official *madhāhib.*

In many cases, however, the subsequent development went counter to the ways recommended by Ibn al-Muqaffa'. For me, this turn of events neither in anyway detracts his importance nor diminishes the historical value of his statements. Indeed allthose not only reveal to us certain tendencies ofhistorical developments, but more significantly shows the novel idea on the formal lawmaking expressed as early as the second century Hijrah.
Ibn al-Muqaffa` proposed that the caliph become the ultimate authority in religious matters, as well as the codifier of Muslim law and creed. The Sassanian kings had not occupied a similar position, nor could the model of the Byzantine emperor or the Roman Pope have had any influence on our author.[1] His suggestions reflect the expectations of the generation which witnessed the sweeping victory of the Abbasids and believed that the caliphs from the Prophet's own family would enjoy an authority comparable almost to that of the founder of Islam itself. But although some of the earlier Abbasid caliphs meddled in theological and legal matters, Ibn al-Muqaffa''s ideas of a rigid control by the state of the religion of its subjects never materialized. The result was that the state became weak while religion gained what the state had lost: it enjoyed a degree of freedom and a variety of possibilities of development which handed strict control of the state it would never have attained.Nevertheless, instead of becoming the interest of a limited clique-—as Zoroastrianism was-, Islam became the concern of a vast middle class, and while the Persian religion almost disappeared with the downfall of the Sassanid empire, the dismemberment of the Muslim state had an opposite effect on Muslim religion. The plea of Ibn al-Muqaffa' for the closest connection between state and religion resonated with the tendencies prevailing at the very beginning of the ʿAbbasid era. Subsequent history showed that this connection was not insoluble (Goitein 1967:166-67).

Acting and Opining Islamically in Changing Time: Sayyid ʿUthmān ibn ʿAbd Allah ibn ʿĀqil al-ʿAlawī:
Sayyid ʿUthmān emerged as a controvesial religious figure in the late 19thcentury; however, his controversy also shows the relevance of Islamic jurisprudence in giving some order in time of complex change. The Duth colonial government through its top adviser, C. Snouck Hurgronje, reasonably considered the necessity of winning Muslim support in its colonial march. The prevailing wars with many rulers in Aceh and other Outer Islands must be balanced by a more positive gesture to the population at large. Sayyid ʿUthmān was officially appointed as an honorary adviser on Arab Islamic affairs to the government. He professionally took up the task as can be seen, among other things, in his influential treatise on the manual for Muslim judges and jurisconsults, entitled *al-Qawānīn al-Shar'iya li Ahli al-Majālis al-Ḥukmiya wa al-Iftā'iya*. Obviously this work had been initiated in 1881 long before his asssumption of that colonial post.[7] To my understanding the work which is clearly pure *fiqhi* and authentic and therefore enjoys popularity among serious students of Islamic judiciary and jurisprudence. His great attention to and interest in introducing his Muslim countrymen, especially those who had some religious authority, to a more rounded version of Islamic teaching can be considered monumental, at least for his time.

Sayyid ʿUthmān knows very well that the level of education, especially on Islamic jurisprudence, among his contemporary Muslim scholars was not advanced, and many had only rudimentary knowledge of law. He often refers to the terms *qāḍī al-ḍarūra*, meaning "a judge in emergency" for inadequacy of his qualification. Indeed, this was one of the reason that caused the misuse of the position and also corrupt practice among the judiciary. For that reason it is not farfetched to suggest that his initiatives to advocate reform in the training and education of the Muslim judges and to develop sober juristic codes and rules belong to his major contribution toward standardization and modernization of judicial system in Indonesia. Certainly the *Qawānīn* is no match, as far as positive "national" code is concerned, for Malayan Mohammedan Law, let alone for the 1991 KHI, however, it has the nucleus and spirit of all these.

His discussion in seven introductory or foundational chapters of the *Qawānīn*deals with the handy but comprehensive Islamic legal references, for Sayyid Sayyid ʿUthmān means key Shāfiʿite texts, especially Ibn

[7]It should be noted, however, that Sayyid ʿUthmān was also close to other Dutch officials such as L.W.C. van den Berg.

Ḥajar's *Tuḥfa* and al-Ramlī's *Nihāya*.Then in the next seven chapters, Sayyid ʿUthmān focuses his exposition on the matters related to the appointment and task of *qāḍī*and *mufti*. Interestingly he maintains that Muslim religious officials including *qāḍī*can be appointed by non-Muslim rulers. Here obviously he was responding to the contemporary political reality in the Indies. In the following three chapters, Sayyid ʿUthmān addresses some issues in inheritance, including pooled property (*gana-gini*) and the concept of *hība*.Chapters 18-32 address the issues in marriage and divorce, including *fasakh* and *taʿlīq al-ṭalāq*. In the last eight chapters, Sayyid ʿUthmān specifies the various tasks of a judge.

At the same time, Sayyid ʿUthmān also considered the relevance of Islamic jurisprudence in addressing some pressing political issues of his time. Indeed, he belonged to a group of scholars who even during the heyday of*jihād*ismin the late 19th century refrained from endorsing holy war. For example, Sayyid ʿUthmān claims that the idea of *jihād* as propagated by Muslim leaders in West Javaduring the second half of the 19th century was invalid and had never been previously implemented in Southeast Asia. No religious scholar had ever espoused this idea before. Moreover, he criticizes *the jihād* leaders as being affected by the *ghurūr* (self-deceiving attitude). Obviously he refers to the works of many Jawi scholars in the Ḥaramayn around this period. They normally specify certain requirements to launch *jihād*, including the authorization by the ruler (*sulṭān*). Since, on his his view, no one at the time can be authorized to lead Muslims for *jihād* then no one is under obligation to take part in it (see Iik 2005).

An important reflection from the works and activities of Sayyid ʿUthmān can be gleaned. After all the state for being crucial in human and modern existence, also connotes state-vested interests which must be continuously guarded, no less in its slogan of order and stability.The glaring private reflection and the strategic formal councels which Snouck Hurgronje (Gobée and Adriaanse 1936:xxxv) expressed on Sayyid ʿUthmān's precious contribution to the colonial state categorically shows the other side of stability in state structure and initiatives. In a sense, the skill and knowledge in Islamic jurisprudence were debased for the sake of state's *raison d'être*. What can be brought home, among other things, first Islamic jurisprudence has potential to respond to challenges and change in very sophisticated and reasonable style and kind. Second, by virtue of its sophistication and multipronged means, it is also prone to misuse. Third, morality alone cannot be used as a means of prevention,it must develop its clear guide, ethics, and mechanism for all time reference.

After all it was Sayyid ʿUthmān who clearly formulated the first clear step toward standardization of Islamic judiciary relevant to the advance in modern Dutch-controlled court. If Ibn al-Muqaffaʿ in the second secondary Hijra argued for the unification and standardization of the law, Sayyid ʿUthmān had initiated, if not done, it to an extent.

Confidence or Another Means in Modern Governing: Endorsing Sharīʿa in Brunei

In recent years many glaring examples of the empowerment of the *sharīʿa* have stolen major portions of world attention from the debate of the *ḥudūd* implementation in Kelantan (the 1990s) to the promulgation of the *sharīʿa* penal code in Brunei Darussalam (October 2013). Obviously these can be categorized as contributions of the Islamc jurisprudence to the political discourse of modern state of our time.

In the post-Pacific War, Brunei scholars and religious leaders consider diverse schemes in the administration of Islamic affairs and their legal stipulation -legacy of the British residential period- as biased and tendentious as they aimed to undermine religious law and in the long run push the religion aside from the public sphere. For them it is their primary duty to bring back Brunei's legal and judicial tradition consistent with its pledge to religious principles. Indeed, the 1959 Constitution stipulates, among other things, that Islam is the official religion of Brunei. Since the late 1960s, this stipulation has won serious re-consideration and examination by various religious experts in the country. Can then the promulgation of the Malay-Islamic-Monarchy (in Malay MIB) in 1984 as the national philosophical-cum-ideological underpinning an outcome of that search for Islamic roots and realization of Brunei's Islamic vision?

For them, Brunei's legal system and administration of justice must be turned fully Islamic as was the case in the pre-residential period. This does not mean, however, they argued in the mid-1990s, that the existing legal system should be totally abrogated; rather it should be restructured and fashioned in accordance with Islamic principles. How? An higher religious official, today's *Hakim Syar'ie* (Shar`i Judge), maintained that exerted and comprehensive reviews of all laws in the country are necessary to ensure that they are in accordance with Islamic teaching and principles or at less not incongruous with them.[8]
For a quite some time since the late 1980s, the sultan of Brunei had indicated, in response to some voice in the religious elite circle, his intention to pursue a more systematic modern Islam education and Islamization of the country's legal system. This resulted in various schemes and plan to establish higher Islamic educational institutions and new education programs, including the integrated schooling (*pendidikan bersepadu*), and focused research on Islamic law. Shifts in diplomatic, political and economic orientations following the financial crises in the late 1990s led to the comparable re-orientation of education and development plan in the country. Appreciating its by-product success in free education and health care that catapulted the country into the rank of successful modern states in bringing better health and social services, including human security index,[9] Brunei has invested and paid more attention to work for world ranking in other fields including human resources development, its indispensable means, education. Not totally shedding its nationalistic spirit, education has been considered as the strategic and immediate tool to navigate the new century. In this enterprise, Islam has also come to the fore, as a bastion and capital for buttressing the new vision. How? The Brunei ruler has coined an interesting term "authentic/pristine/genuine Islamic university" (*universiti Islam tulen*), whereby Bruneians will successfully face the challenge in the new century.[10] Indeed, the older university in the country, UBD, in tandem with other higher learning institutions such as Brunei Institute of Technology, was tasked with finding advanced ways to deal with the country's evolving needs and challenges as well as to internationally enhance the country's reputation.

In a National Day *titah* (speech) in February 2004, the sultan decreed that a task force[11] would be established "to update the national vision" and a long- term (2006–35) development planning body would be instituted under the ministerial control. More importantly for the immediate future, the monarch announced on July 15, 2004, the resurrection of the Legislative Council, founded in 1959 but suspended briefly after an abortive uprising in 1962 and abolished in 1984 (Horton 2004:181).

How to explain the surprising radical legal reform, or rather twist, especially the introduction of the comprehensive "*Shari`a* Penal Code" (*hudud* law) in October 2013? Various backgrounds and explanations can be gleaned in the light of regional change and strategic balance and also Brunei's continuing search for beyond-oil economic resources.How and when was the idea of 2035 Vision (Wawasan 2035) and who inspired and convinced the necessity of introducing it?The initiatives since the late-1990s to make Brunei a center of Islamic financial and communication hub in the region: How? Obviously the steady development in public education and health should be located within the development of more focused planning for the overall development programs.

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[8]The traditions with which Muslim scholars (*'ulama'*) were concerned included many, such as the *sharīʿa*, viewed as divinely revealed. Scholars and teachers had to balance their efforts to demonstrate the urgent relevance of God's message, then, with a normatively "conservational" (Eickelman 1985:58) preservation of its eternal truths. Striking a balance between conservationalism and relevance has not always been easy.

[9]UNHR-OHCHR, "Universal Periodic Review - State under review, Brunei Daarussalam," May 2, 2014 [http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights2May2014AM.aspx].

[10] Since the beginning of the 21st century the ruler has alluded the plan to establish a fully Islamic university. Indeed, the term *univesiti Islam tulen* was used in his speech at the UBD convocation in September 6, 2005.

[11] Who were the key members of the task force? See US Reports on HR Practices and Religious Freedom (2004-5).

In post-independence Brunei, the study of Islam enjoyed more opening for intensification and improvement. Obviously the newly declared Negara Brunei Darussalam aimed to develop as Malay Islamic Monarchy. Thus it was expected that the greater and autonomous field of Islam, including its education and the legal system, should be given more priority. The foundation of the Islamic propagation center, Pusat Dakwah Islamiah, in 1985 can be considered a relevant initiative. Again when the first university was established in mid 1985, soon an institute of Islamic studies followed.

Yet, a puzzle emerged when ministries were introduced to the new governing structure, a compact cabinet dominated by the royalty, ironically the department of Islamic affairs was not promoted to the ministry level, like the other departments such as finance, home affairs, defence, foreign affairs, youth, sport and culture, education, communication, and law. As far as this paper is concerned, the event indeed shows the prevailing dynamics of the existing dual education system and also the pattern of governing and governance in the country, particularly Islam and the state. Ideally following the logic of religio-political arrangement during the British residency, when the sultan regained the full power after 1984, Islam should be fully empowered as it was the only field that during the protectorate period he continued to enjoy full power and authority, as other fields were encroached by the Resident.

Only two years later in 1986 was the establishment ministry of religious –not Islamic- affairs formally declared. Seen in the position given to Islam in the state philosophy and its formation, such a formal recognition seems to have been natural. However, examining the continuing dynamics of education and Islam in the country leads us to further inquiry into several areas. How does the state consider ways to propagate and at the same time have power over knowledge production and development? Does the state need to maintain dual approach to secular and religious education? What is the rationale for this? Why not putting both under the united umbrella? In recognition for the position of Islam historically and strategically, how does such a unification lead to?

In a sense the foundation of new universities in the early 21st century highlights the potentials of creating balance and check in government and society. If previously the men of religion were rewarded with an autonomous higher educational institution in the form of Institute of Islamic Studies, founded in 1987, following the foundation of UBD two years earlier, they found themselves empty handed when the Institute was absorbed into UBD as a faculty.

Again when the faculty was divorced from UBD in 2007, it was not given back to the MoRA, but became an Islamic university managed by the MoE. Yes, KUPU, University of Religious Education, was enlivened and given to the MoRA, however, it was stigmitized with its specific and limited field in purely education.

The continuing check on the men of religion through control of and interference in higher education can be explained through several factors. First of all, it is important to exert some control mechanism over higher religious education in view of the centrality of religious symbol in the country, despite the fact or rather because the sultan is the highest authority in religious matters. The men of religion have yet to show more professionalism in running higher educational institution. Lastly, it is necessary to show who is the master even in religious matters.

Now, when the sultan announced his decision to fully, or rather literally, implement the *shari^{c}ah* law in October 2013, in fact he also challenged the religious establishment in the country to act –no more rhetorical assertion. If previously it was the sultan who was indirectly forced to Islamize the country including its legal system, now it is the religious establishment that appeared to be unprepared and surprised by the ruler's daring move.

If other observers have put the Brunei ruler's surprising legal initiative in the context of moral, personal and transient reasons, it is equally important and relevant to the discussion of the study of Islam in Southeast

Asia to locate this initiative in the dynamics and crucial place of knowledge formation and religious dynamism in modern state.

The major themes of governance in 21st century Brunei focus on achieving development and prosperity at the world top level, not only on its economic prosperity but also many other fields, especially health, education, human security, science and technology. Brunei has been fully aware that its oil reserve is limited quantitatively and temporally. Therefore it must move ahead with seeking new ways to maintain its resent economic prosperity and also find ways to open new economic opportunity. Since the mid 1990s, concomitant with its neighbors' world initiatives such as Malaysia's cyber corridor, Singapore financial center and many other mega projects, Brunei has sought a niche in Islamic banking and earlier communication hub. Making Brunei more seriously Islamic can promote its credential among the Gulf investors and bankers, private and public sectors.

Legal reform domestically resulted in

- Identity
- Credential
- Support

Legal reform can be expected to win wider international recognition

- To benefit: umma solidarity
- To expect economic support nd financial trickling down effects
- To firewall its own exclusivity *vis-a-vis* regional and international interference

Brunei has considered the comprehensive implementation of the *sharīʿa* as a strategic move to join and benefit from globalization.

Islamic Legal Legacy

Since Muslims have dealt extensively with the legal study (*fiqh*) it is a fact that the most extensivepublication and writing by Muslim scholars come from the field of jurisprudence. Then in the next category of classical legal tradition and heritage, the importance of legal matters in the life of Muslims can also be seen in the large numbers of *fatāwā* collection. Following the advance of Western colonization, Muslim countries experienced a new trend in legal tradition as the idea of establishing positive law was launched with the main purpose of political centralization and the maintenance of colonial order. This top-to-down approach to the legal formation led to the modernization, to use a standard term, of Islamic law and at the same time to the opening gate of Islamization drive of national law. The British colonial term "Mohammedan Law" perhaps can be cited as a fair example of this period's formal legal innovation in many Muslim countries directly under colonial rule or those formally independent. Out of these positive laws, we begin to see the production of legal decisions by various religious courts manned by Muslim judges of varying degrees of legal capacity. The modernization of education in many Muslim countries and the emergence of more trained legal specialists led to several new developments in the field of legal study and research. More works on Islamic jurisprudence came to be published by prestigious publishers and journals. More specifically, diverse research centers on law and legal studies were founded by experts, Islamic organization and governments in the respective capitals of Muslim countries. With the outflow of oil booom fund to Islamic cause, it is almost natural that Islamic jurisprudence has become one the biggest field to receive such funding. Thus, the publication of more innovative legal approaches and studies follow.

Textual and philological approach to scripture, including diverse ways of reading a text such as semantic, historical and ta'wīl understanding. In the absence of textual reference, various juristic tools come to fore incuding analogy, consensus, common good, priority and *al-aṣl al-ibāḥah*. Mechanism for renewal and legal innovations:

To ask why certain laws are being implemented is to acknowledge the many entangled reasons and factors involved in the process. How can the shari`a be implemented in a neutral turf, without biases and narrow goals?The deeper the Islamization drive into the secular legal system, the more bargaining the former has to offer and *vice versa*.

The fact that Islamic jurisprudence has expanded to cover diverse geo-cultural domains, from Malikism in the Maghrib to Hanafism in Central Asia evidences its transforming-*cum*-adapting vitality. Interplay and dynamic between norm and humanity were and are played at their best. How does this inspire post-oil Muslim society to move forward?

The formation of modern nation-state has been considered a major mismatch in the full implementation of the *sharī'a* as the novel concept of state negated most aspects of the *sharī'a*'s*raison d'être*. However, comparing the *sharī'a* to the increasing number of international charters, covenants, declarations and treaties, it is certainly desirable to not only Muslims but the world community to seriously appreciate attempts at making the *sharī'a*, in a broader sense, contributing legal and moral principles to global peace and cooperation.

Conclusions

Let's not leave the discussion of Islamic jurisprudence without pointing to its most futurist scheme, order and hope. It seeks not only order and stability but also dynamism and relevance.

Positive engagement and dialogue in inter-legal relations necessitate some finetuning and adjustment in the practical orientation and structural design of Islamic jurisprudential approach. Without abandoning its traditional exclusive niche, the new arena created by the nation-state requires a more inclusivist engagement and accommodative reach. At the same tone, the nation-state cannot dogmatically self-claim absolutism in its legal principles and concept, particularly when they originally were alien products, refusing to engage in dialogue wih other stakeholders.

For a social historian, the more felt impact and contribution of the Islamic jurisprudence to Muslim society and the world is its inherent character of providing order and stability even when the state has failed to provide. Is is pertinent that this value and quality be shared and if necessary endorsed? I have highlighted three historical episodes from the `Abbāsī, Indies and contemporary eras which variably illustrated how Islamic law, particularly Islamic jurisprudence, was designed and adopted as a means of dealing with change and challenge.

In our contemporary period, we have seen attempts by diverse Muslims to relive and transform the early institutional and ideational models as responses to what they consider failure of the modern ones to bring a better world as well as their own fellow religionists to uphold the pristine messages and not rarely the words of the Scripture.

Obviously certain concepts and institutions, including those related to Islamic jurisprudence, have not objectively catered the changing contexts of modern change. For example, we have only recently found more scholarly attention given to Muslim minorities. As far as Islamic jurisprudence is concerned they belong to the majority and thus were not specifically addressed. Should they simply endorse the many redundant ways of expressing their public religiousness? How should they promote the positive sides of being Muslim living as minorities among the seas of other fellow citizens?

This paper aims to show that the major contributions of Islamic jurisprudence to our contemporary world come as much from its practical guide and solution as from its general concepts and anticipative-inspirational ideas. The more realistic an initiative/solution, the more longlasting will be.

Justice is not revealed in frozen words but through work and striving in complex world and diverse settings. In the Islamic context, it is clear that powerholdersare given legitimacy to rule with a pledge of obedience to God and his prophet. From the thought of Muslim jurists and scholars to its contemporary response by the leaders and public it is clear that noble ideas including justice cannot be simply uttered and left to materialize. They need to be promoted and ushered for implementation, especially when they deal with justice.

The fact that Islamic jurisprudence generally grew and prospered at the hand of private scholars and jurists indicates the moral and structural relevance of its juristic and religious formulation to society at large – Muslim social order. Not surprisingly, it has permeated social and private lifeway of Muslims. It leaves prints of Islamic characteristics on individuals and community and their ordering.

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